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SUBJECT: COLOMBIA: 2010 NTE SUBMISSION

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¶1. Per reftel, following is Embassy Bogota's submission for the 2010 National Trade Estimate Report, which has been e-mailed to USTR, WHA/AND, WHA/EPSC and EEB/TPP/BTA.

TRADE PROMOTION AGREEMENT

¶2. The United States-Colombia Trade Promotion Agreement (CTPA) was signed on November 22, 2006. Colombia's Congress approved the CTPA and a protocol of amendment in 2007. Colombia's Constitutional Court completed its review in July, 2008 and concluded that the Agreement conforms to Colombia's Constitution. In April 2008, the United States submitted to the U.S. Congress legislation that would approve the CTPA. The U.S. Congress did not act on the legislation primarily due to concerns regarding violence against trade unionists in Colombia. The Obama Administration has indicated that it will promptly, but responsibly, address the issues surrounding the CTPA.

¶3. The CTPA is a comprehensive free trade agreement. When the CTPA enters into force, Colombia will immediately eliminate most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The CTPA also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. Under the CTPA, U.S. firms will have better access to Colombia's services sector than other World Trade Organization (WTO) Members have under the General Agreement on Trade in Services (GATS). All service sectors are covered under the CTPA except where Colombia has made specific exceptions.

IMPORT POLICIES

Tariffs:

¶4. Since the 1990s, Colombia has reduced customs duties and eliminated many nontariff barriers. Most duties have been consolidated into three tariff levels: 0 percent to 5 percent on

capital goods, industrial goods, and raw materials not produced in Colombia; 10 percent on manufactured goods, with some exceptions; and 15 percent to 20 percent on consumer and "sensitive" goods. Exceptions include: automobiles, which are subject to a 35 percent tariff; beef and rice, subject to an 80 percent duty, milk and cream, subject to a 98 percent tariff (until 2010); and whey, which is currently levied a 94 percent import duty. Other agricultural products fall under a variable "price band" import duty system established by Decision 371 of the Andean Community of Nations (CAN).

15. The price band system includes 13 product groups and covers 154 tariff lines, which, depending on world commodity prices, can result in duties exceeding 100 percent for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry parts, cheeses, and powdered milk. The price band system has been suspended for milk powder and rice, and was reactivated for white corn (Decree 671 of 2009) after a temporary suspension. The price band system also negatively affects U.S. access to Colombian markets for products such as dry pet food, which contains corn. By contrast, processed food imports from Chile and countries bound by commitments under the CAN (Peru, Ecuador, and Bolivia) enter duty free.

16. When the CTPA enters into force, Colombia will immediately eliminate its price band system on trade with the United States.

This, coupled with a preference clause included in the CTPA, will help U.S. exports compete more effectively in Colombia's market. Over half of the value of current U.S. agricultural exports to Colombia will enter duty free upon entry into force of the CTPA, including high-quality beef, a variety of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. U.S. agricultural exporters also will benefit from duty free access through tariff-rate quotas (TRQs) on corn, rice, poultry parts, and dairy products.

17. Over 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty free immediately upon implementation of the CTPA, with remaining tariffs phased out over 10 years. Colombia agreed to join the WTO Information Technology Agreement, removing tariffs and addressing nontariff barriers to information technology products.

Nontariff Measures:

18. Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder (Resolution 2551 of 2002) and poultry parts (Resolution 001 of 1991). The CTPA contains provisions that should address this issue. The Colombian government maintains tariff-rate quotas for rice, soybeans, yellow corn, white corn, and cotton (Decree 430 of 2004) and requires that importers purchase local production in order to import under the tariff-rate quota. Under the CTPA, the government of Colombia committed to ensuring that access to a TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

19. Based on CAN Decision 331, Colombia does not permit the importation of used clothing. Importers of used and remanufactured goods may apply for licenses to bring products into Colombia under limited circumstances (Resolution 001 of 1995). Industry reports that in practice authorities do not grant such licenses, resulting in the effective prohibition of these imports. Decree 4725 of 2005 prohibits the importation of used or refurbished medical equipment

that is older than five years, thereby limiting market access for high-quality remanufactured products, such as imaging equipment. Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. This will provide significant new export and investment opportunities for firms involved in remanufactured products such as machinery, computers, cellular phones, and other devices.

¶10. Colombia assesses a consumption tax on alcoholic beverages through a system of specific rates per degree (percentage point) of alcohol strength (Law 788 of 2002, Chap. V). Arbitrary breakpoints have the effect of applying a lower tax rate to domestically produced spirits and therefore create a barrier for imported distilled spirits. Under the CTPA, Colombia committed to eliminate the breakpoints for imports of distilled spirits within four years of entry into force of the agreement. Additionally, Colombia committed to eliminate practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

¶11. Colombia maintains standards-related measures in the following areas, which constitute significant barriers to U.S. exports:

Measures Concerning Motorcycles and Helmets:

¶12. Colombia requires that a large percentage -- 20 percent -- of imported motorcycles be tested. Colombia does not have the facilities to test large motorcycles.

¶13. Current motorcycle helmet standards act as barriers for the import of American helmets. Lower quality helmets often have testing requirements "waived," as no labs exist for required helmet testing. Despite the fact that U.S. helmets often comply with higher standards than those of Colombia, there is no mechanism in place that allows them to be certified.

Sanitary and Phytosanitary (SPS) Measures:

¶14. Colombia maintains SPS measures in the following areas, which constitute significant barriers to U.S. exports:

Poultry:

¶15. In 2006, the United States and Colombia formalized their recognition of the equivalence of the U.S. meat and poultry inspection systems, and reached agreement on the specific contents of U.S. sanitary certificates accompanying U.S. poultry and poultry products exported to Colombia. However, the Ministry of Agriculture through its sanitary and phytosanitary regulatory agency, the Colombian Agricultural Institute (ICA), has imposed separate import requirements that do not follow the recommendations of the World Organization for Animal Health (OIE) and have adversely affected U.S. exports of cooked poultry meat, poultry

meal, and egg products.

¶16. The GOC issued law 1255 of November 28, 2008, as a legal framework for preserving Colombia's poultry industry sanitary conditions. This legislation deals mainly with the local conditions for poultry production and distribution, but Article 17 bans imports of poultry products from countries with non-reportable outbreaks of Avian Influenza (AI) and Newcastle disease. It also stipulates a risk assessment to be undertaken by ICA before a resolution is issued to allow resumption of poultry product imports. It is unclear how ICA will conduct the risk assessment and what the approximate date will be for the import ban to be lifted.

¶17. Colombia also prohibits poultry imports originating from the states of Arkansas, Minnesota, Idaho and Oregon. Requests for additional technical information on the outbreaks have been used as an excuse for a delay in lifting the ban.

Salmonella:

¶18. The National Institute of Medicine and Food Supervision (INVIMA) has stated that a policy to replace the current zero-tolerance approach for Salmonella is being developed. While the new policy may be an acceptable stop-gap solution, the goal remains a no-salmonella-testing policy for imports of raw poultry meat. In early 2009, INVIMA agreed upon a mechanism with local importers of mechanically deboned meat, which has avoided import disruptions for the product up to this point.

Live Cattle:

¶19. Since 2003, the USG has been discussing with the Colombian animal health authorities how to re-establish imports of live bovines. Colombia has argued its obligation to follow CAN rules to lift the restrictions on imports of live cattle, which has resulted in delays on a country-led decision. The CAN Secretariat General must change current rules to allow the issuance of a resolution establishing the sanitary conditions for those imports. Canada has already reached an agreement with Colombia on live cattle imports.

Live Hogs:

¶20. The U.S. and Colombia continue efforts to establish sanitary conditions for imports of live hogs. Some technical aspects remain to be resolved before Colombia opens its market to U.S. live hogs for breeding.

Pet Food:

¶21. No pet food may contain any bovine ingredients other than materials legally imported from a country recognized as free of Bovine Spongiform Encephalopathy (BSE). U.S. officials continue to engage Colombian authorities in pursuit of science-based import requirements with respect to such trade.

¶22. Under the CTPA, Colombia agreed to provide U.S. goods, services, and suppliers with national treatment. U.S. firms will have access to procurement by Colombia's ministries and departments, legislature, courts, and first-tier sub-central entities, as well as a number of Colombia's government enterprises, including its oil company. Currently, U.S. companies are required to have a local partner in order to qualify for government procurements. Once the CTPA enters into force, Colombia will not be able to apply to CTPA-covered procurements Law 816 of 2003, which mandates preferential treatment to bids that provide Colombian goods or services. Colombia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

¶23. In a 2008 effort to ease the impact of an appreciating peso, the Colombian government issued tax rebate certificates (known as "CERTs"), to exporters in certain sectors. The value of the CERT is worth 4 percent of total exports of designated goods. There were no new CERT emissions in 2009, as of November.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

¶24. Colombian agencies that administer IPR - the Superintendent of Industry and Commerce (SIC), the Colombian Agricultural Institute (ICA), the Ministry of Social Protection, and the Ministry of Justice - are historically understaffed and underfunded. Extensive backlogs exist in the granting of patents, copyrights, and trademarks. The patent regime in Colombia provides for a 20 year protection period for patents and 10 year term for industrial designs; protection is also provided for new plant varieties. U.S. pharmaceutical and biotechnology companies are

concerned with the limited scope of patentable subject matter, specifically with respect to improvements.

¶25. The CTPA provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with both U.S. and international standards of protection and enforcement. Such improvements include state-of-the-art protections for digital products, such as U.S. software, music, text, and videos; stronger protection for U.S. patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting, including by criminalizing end-user piracy.

Enforcement:

¶26. Enforcement of IPR has been slow and weak. Certain infractions are considered criminal offenses and perpetrators can be sentenced to prison and/or fined, but judges rarely impose those penalties. The Colombian government has made a concerted effort in recent years to enforce its intellectual property laws. Coordination between the Colombian government and the private

sector is good, resulting in greater enforcement activities, such as raids and arrests. Despite these improvements, intellectual property industry representatives report that the level of intellectual property enforcement is still a major concern, particularly with regard to the rulings by judges.

SERVICES BARRIERS

¶27. Implementation of the CTPA will require Colombia to accord substantial market access across its entire services regime, subject to a limited number of exceptions. Some restrictions, such as economic needs tests and residency requirements, still remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing.

Legal Services:

¶28. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm (Decree 196 of 1971).

Financial Services:

¶29. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices, except for 'general interest' reasons (Decree 663 of 1993). Insurance companies must maintain a commercial presence to sell policies other than those for international travel or reinsurance. Colombia prohibits the sale of maritime insurance by foreign companies.

¶30. Colombian legislation permits 100 percent foreign ownership in financial institutions. Foreign banks must establish a subsidiary to operate in Colombia (Decree 663 of 1993).

¶31. When the CTPA enters into force, Colombia will phase in further liberalization in financial services, such as allowing branching by banks and insurance companies and allowing the cross-border supply of international maritime shipping and

commercial aviation insurance within four years of entry into force of the Agreement. Under the Agreement, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.

Transportation:

¶32. Trans-border transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with commercial presence in the country and licensed by the Ministry of Transportation (Law 336 of 1996). Colombian law permits international companies to provide cabotage services (i.e., transport between two points within Colombian territory) "only when there is no national capacity to provide the service." Under the terms of the CTPA, Colombia committed to allow

100 percent foreign ownership of land cargo transportation enterprises in Colombia.

Telecommunications:

¶33. Colombia currently permits 100 percent foreign ownership of telecommunications providers, and U.S. companies can obtain the right to interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. When the CTPA enters into force, U.S. firms will be able to lease lines from Colombian telecommunications networks on nondiscriminatory terms and re-sell most telecommunications services of Colombian suppliers to build a customer base.

¶34. One trade association has complained that the creation of a "convergent license" category (Decree 2870 of 2007 and Resolution 2478 of 2007) has resulted in the imposition of licensing conditions that are burdensome for some carriers (particularly smaller carriers) because they require accounting separation, the posting of a performance bond, and - in the case of long distance service suppliers - a modification of the company's legal entity.

¶35. The recently passed Postal Services Law allows the Colombian government to cross-subsidize the state-owned postal company, which could give it an unfair competitive advantage over U.S. express courier service companies.

INVESTMENT BARRIERS

¶36. Foreign investment in Colombia is granted national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for national security (Decree 356 of 1994), broadcasting, (Law 680 of 2001) and the disposal of hazardous waste (Decree 2080 of 2000).

¶37. Colombia agreed to strong protections for U.S. investors in the CTPA. When it enters into force, the Agreement will establish a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the CTPA. U.S. investors will enjoy in almost all circumstances the right to establish, acquire, and operate investments in Colombia on an equal footing with local investors. The CTPA's investor protections will also be backed by a transparent, binding investor-state arbitration mechanism.

¶38. In certain cases, the Government of Colombia does not allow arbitration clauses in contracts, to which it is a party. Enforcement of arbitration judgments against the Colombian

government, as well as municipal and departmental governments, is very difficult.
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